

## Update: Domestic Violence Benchbook (2d ed)

### CHAPTER 5

#### Evidence in Criminal Domestic Violence Cases

##### 5.12 Evidence of Other Crimes, Wrongs, or Acts Under MRE 404(b)

###### C. Other Acts Evidence in Family Violence Cases

Insert the following case summary as the second bullet in Section 5.12(C), after the summary of the *Sabin* case:

F *People v Hine*, \_\_\_ Mich \_\_\_ (2002):

The defendant was convicted by a jury of first-degree felony murder and first-degree child abuse in the death of defendant's girlfriend's two-and-a-half-year-old daughter. The victim, who died from multiple blunt-force injuries, sustained severe internal injuries, numerous circular bruises on her abdomen, and a bruise across the bridge of her nose. The prosecutor sought to introduce "other acts" evidence under MRE 404(b) to show, among other things, a common scheme, plan, or system in perpetrating assaults. Three of defendant's former girlfriends, one of whom was the victim's mother, testified at a pretrial hearing. Two of these witnesses testified that defendant perpetrated "fish hook" assaults on them: a method where defendant put his fingers inside their mouths and forcefully stretched their lips. One witness testified that defendant "head-butted" her, using his forehead to strike her nose. Each of these witnesses also testified that defendant struck, poked, grabbed, threw, and kneed them. The trial court admitted this testimony, but the Court of Appeals reversed defendant's conviction, holding that substantial dissimilarities existed between the assaults on defendant's former girlfriends and the injuries sustained by the victim, and that the danger of unfair prejudice resulting from the admission of such evidence outweighed any marginal probative value. The Michigan Supreme Court remanded

to the Court of Appeals for reconsideration in light of *Sabin, supra*. The Court of Appeals again reversed, finding defendant's assaultive behavior inadmissible under *Sabin* since it was used to prove the "very act" that was the object of the proof, and because of the dissimilarities between the uncharged and charged conduct.

The Michigan Supreme Court reversed the Court of Appeals and remanded the case to that court for consideration of the defendant's remaining appellate issues. The Court stated that the alleged "fish hook" assaults against defendant's former girlfriends were similar to the method or system that could have caused fingernail marks on the victim's cheek. In addition, the bruises on the victim's abdomen were consistent with injuries resulting from being forcefully poked in the abdomen. Noting that evidence of uncharged conduct need only support an inference that a defendant employed a common scheme, plan, or system in committing the charged offense, *Sabin, supra* at 65-66, the Court concluded that the testimony of defendant's former girlfriends contained sufficient commonality with evidence of the causes of the victim's injuries to permit such an inference.

## **CHAPTER 6**

### **Issuing Personal Protection Orders**

#### **6.2 Introduction to Personal Protection Orders**

##### **C. Overview of Michigan's PPO Statutes**

A personal protection order or minor personal protection order may include a foreign protection order enforceable in Michigan under MCL 600.2950/. MCR 3.708(A)(1) and MCR 5.982(A).

## **CHAPTER 6**

### **Issuing Personal Protection Orders**

#### **6.5 Procedures for Issuing PPOs**

##### **C. Ex Parte Proceedings**

Effective September 11, 2002, MCR 3.705(A)(2) states that “[i]n a proceeding under MCL 600.2950a [non-domestic stalking PPO], the court must state in writing the specific reasons for issuance of the order.”

##### **D. Hearing Procedures**

##### **3. Making a Record**

Effective September 11, 2002, MCR 3.705(B)(6) requires a court to state in writing the specific reasons for issuing a non-domestic relations stalking PPO. MCR 3.705(B)(6).

##### **E. Required Provisions in a PPO**

Effective September 11, 2002, MCR 3.706(A) was amended to require certain provisions to be contained in a personal protection order. MCR 3.706(A)(2) and (A)(5) now state:

“(2) A statement that the personal protection order is effective when signed by the judge and is immediately enforceable anywhere in Michigan, and that, after service, the personal protection order may be enforced by another state, an Indian tribe, or a territory of the United States.

“(5) A statement that the personal protection order is enforceable anywhere in Michigan by any law enforcement agency, and that if the respondent violates the personal protection order in another jurisdiction, the respondent is subject to the enforcement procedures and penalties of the jurisdiction in which the violation occurred.”

## CHAPTER 8

### Enforcing Personal Protection Orders

#### 8.2 Overview of PPO Enforcement Provisions

Note that a personal protection order or minor personal protection order may include a foreign protection order enforceable in Michigan under MCL 600.2950l, MCR 3.708(A)(1) and MCR 5.982(A).

## **CHAPTER 10**

### **Case Management for Safety in Domestic Relations Cases**

#### **10.4 Confidentiality of Records Identifying the Whereabouts of Abused Individuals**

##### **A. Confidentiality in Friend of the Court Records Generally**

MCR 8.119(F)(2) has been amended, effective September 11, 2002. The amendment requires a court to consider the following criteria when determining whether good cause exists to seal court records:

“(a) the interests of the parties, including, where there is an allegation of domestic violence, the safety of the alleged or potential victim of the domestic violence, and

“(b) the interest of the public.”

##### **B. Complaint and Verified Statement**

###### **1. Information That Must Be Disclosed**

The last paragraph of this sub-subsection refers to MCL 600.659 of the Uniform Child Custody Jurisdiction Act (UCCJA). That provision required parties to disclose a child’s current and past addresses. The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) superseded the UCCJA. See 2001 PA 195. MCR 3.206(A)(3) was amended effective September 11, 2002. A complaint or affidavit must now contain the information required by MCL 722.1209 of the UCCJEA.

In language very similar to that of its predecessor, this section provides in part that, subject to state confidentiality law regarding identifying information:

“each party, in its first pleading or in an attached sworn statement, shall give information, if reasonably ascertainable, under oath as to the child’s present address, the places where the child has lived during the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period.”

However, MCL 722.1209(5) provides as follows:

“If a party alleges in a sworn statement or a pleading under oath that a party’s or child’s health, safety, or liberty would be put at risk by the disclosure of identifying information, the court shall seal and not disclose that information to the other party or the public unless the court orders the disclosure after a hearing in which the court considers the party’s or child’s health, safety, and liberty and determines that the disclosure is in the interest of justice.”

## **CHAPTER 13**

### **Custody Proceedings Involving Multiple Jurisdictions**

#### **13.7 Record-Keeping Requirements Under the UCCJA**

Effective September 11, 2002, MCR 3.214(D) provides for registration and enforcement of another state's custody under MCL 722.1304 of the Uniform Child Custody Jurisdiction and Enforcement Act.